

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

Jeffrey Newman
and
Richard Werth,

Plaintiffs

COMPLAINT

Civil No.: _____

vs.

County of Niagara,

Defendant.

Plaintiffs, by their attorneys, Chiacchia & Fleming, LLP, on behalf of themselves and those similarly situated, for their Complaint against Defendant, aver as true and state:

1. Plaintiffs are residents of the County of Niagara. They are employed by Defendant as Niagara County Corrections Officers and Dispatchers.
2. Defendant is a recognized county government, organized and existing pursuant to the laws of the State of New York.

NATURE OF SUIT

3. Plaintiffs bring this claim on behalf of themselves and other members of the Niagara County Deputy Sheriffs Association (“NCDSA”), a union recognized to represent Corrections Officers and Dispatchers.

4. The claim is against Defendant for its ongoing violations of the Fair Labor Standards Acts (“FLSA”).

5. Defendant has been and is violating the FLSA by refusing members of NCDSA, including plaintiffs, the opportunity to exercise their rights to take earned “comp time” off in a timely manner.

JURISDICTION OF VENUE

6. This court has jurisdiction because Plaintiffs have asserted a claim arising under federal law.

7. Venue is proper in the Western District of New York because the events forming the basis of the suit occurred in this District.

COVERAGE

8. At all material times, the County of Niagara has been an employer of the Plaintiffs (and those in NCDSA similarly situated).

9. At all material times, the County of Niagara has been the employer/enterprise within the meaning of Section 3(d) and/or 3(r) of the FLSA, 29 U.S.C. §203(d) and §203(r).

FACTUAL ALLEGATIONS

10. Plaintiffs (and those in NCDSA similarly situated) have been and remain employees of Niagara County.

11. Pursuant to a bargained-for term in the collective bargaining agreement (“CBA”) between NCDSA and the County of Niagara, Plaintiffs (and those in NCDSA similarly situated) are entitled to accumulate “comp time” in lieu of being paid for overtime hours worked.

12. The CBA, at Article XII Section 9, states that employees, such as Plaintiffs, who wish to take “comp time” off are to give 48 hours advanced notice through a written Request For Time Off form.

13. Despite this agreed-to timeframe for requesting “comp time” off, Defendant has repeatedly, time-and-time again, without just cause and far more than unreasonably, *failed and refused* to grant Plaintiffs (and those in NCDSA similarly situated) the opportunity to take “comp time” off in a timely manner in violation of the FLSA, at, *inter alia*, 29 USCA §207(o).

14. Defendant has repeatedly, time-and-time again, *deferred* the opportunity for Plaintiffs (and those in NCDSA similarly situated) from taking “comp time” off to times when Defendant unreasonably wants to permit them to take it in violation of the FLSA, at, *inter alia*, 29 USCA §207(o).

15. Plaintiffs (and those in NCDSA similarly situated) have been denied the right to take their “comp time” off pursuant to the agreed-upon terms or pursuant to any reasonable schedule or policy in violation of FLSA.

16. Defendant has knowingly, willfully, or with reckless disregard carried out its illegal pattern and practice of failing to allow appropriately timed “comp time” off pursuant to the FLSA.

Wherefore, Plaintiffs (on behalf of themselves and those in NCDSA similarly situated) demand that a judgment be entered by this Court:

- (a) For an Order directing the Defendant to comply with the FLSA;
- (b) For an Order awarding Plaintiffs their costs and attorneys’ fees for bringing this action; and
- (c) For an Order awarding such other relief as this Court deems proper.

Dated: April 16, 2014

Respectfully submitted,

s/Andrew P. Fleming
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